



Court-ordered Pesticide Use Buffer Zones for Protection of Salmonids

Endangered Species Project
Dept. of Pesticide Regulation

5/12/2004



EARTHJUSTICE

Because the earth needs a good lawyer



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01-CV-00132-ANS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON TOXICS COALITION,
NORTHWEST COALITION FOR
ALTERNATIVES TO PESTICIDES, PACIFIC
COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS, and INSTITUTE FOR
FISHERIES RESOURCES,

Plaintiffs,

v.

ENVIRONMENTAL PROTECTION AGENCY,
and MIKE LEAVITT, ADMINISTRATOR,

Defendants,

v.

AMERICAN CROP PROTECTION
ASSOCIATION, et al.,

Intervenor-Defendants.

CASE NO. 001-0132C

ORDER

This matter is before the Court on Plaintiffs' motion for further injunctive relief. Having considered the briefs and arguments of the parties, and the entire record in this matter, and based on the Court's orders dated July 16, 2003 and August 8, 2003, and the oral argument held on August 14, 2003, the Court finds that further injunctive relief is appropriate to prevent potential adverse effects of certain

ORDER - 1

- Lawsuit brought about by Washington Toxics Coalition represented by Earthjustice.
- US Western District Court ruled in favor of plaintiffs.
- Imposes prohibitions for use of 38 active ingredients 100 yds by air, and 20 yds by ground from Salmon Supporting Waters.
- Effective date 2/5/04.

Basis for the Washington Toxics Coalition *etc.* Lawsuit

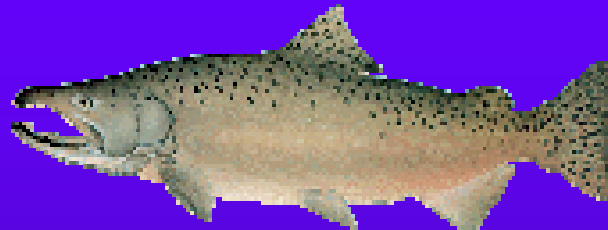


The suit by environmental and fishery groups alleged that U.S. EPA failed to solicit National Marine Fisheries Service (NMFS) formal consultation on the risks from 54 pesticides to 26 distinct populations of Pacific Salmon and Steelhead.

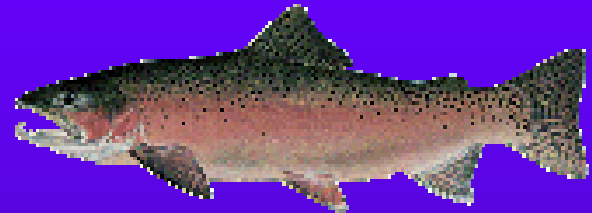
Those native fish are listed as threatened or Endangered under the Endangered Species Act.

Species Affected in California

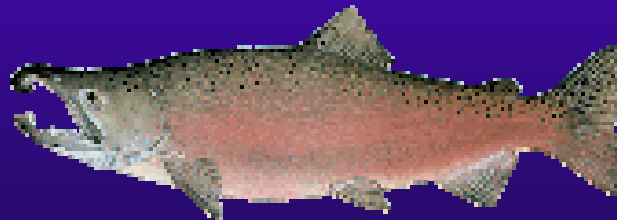
Chinook Salmon



Steelhead Trout



Coho Salmon





- ◆ Order applies to “salmon supporting waters” within the range of the salmon ecologically significant units (ESUs) as identified by National Marine Fisheries Service (NMFS) in its critical habitat designations in Washington, Oregon, and California.



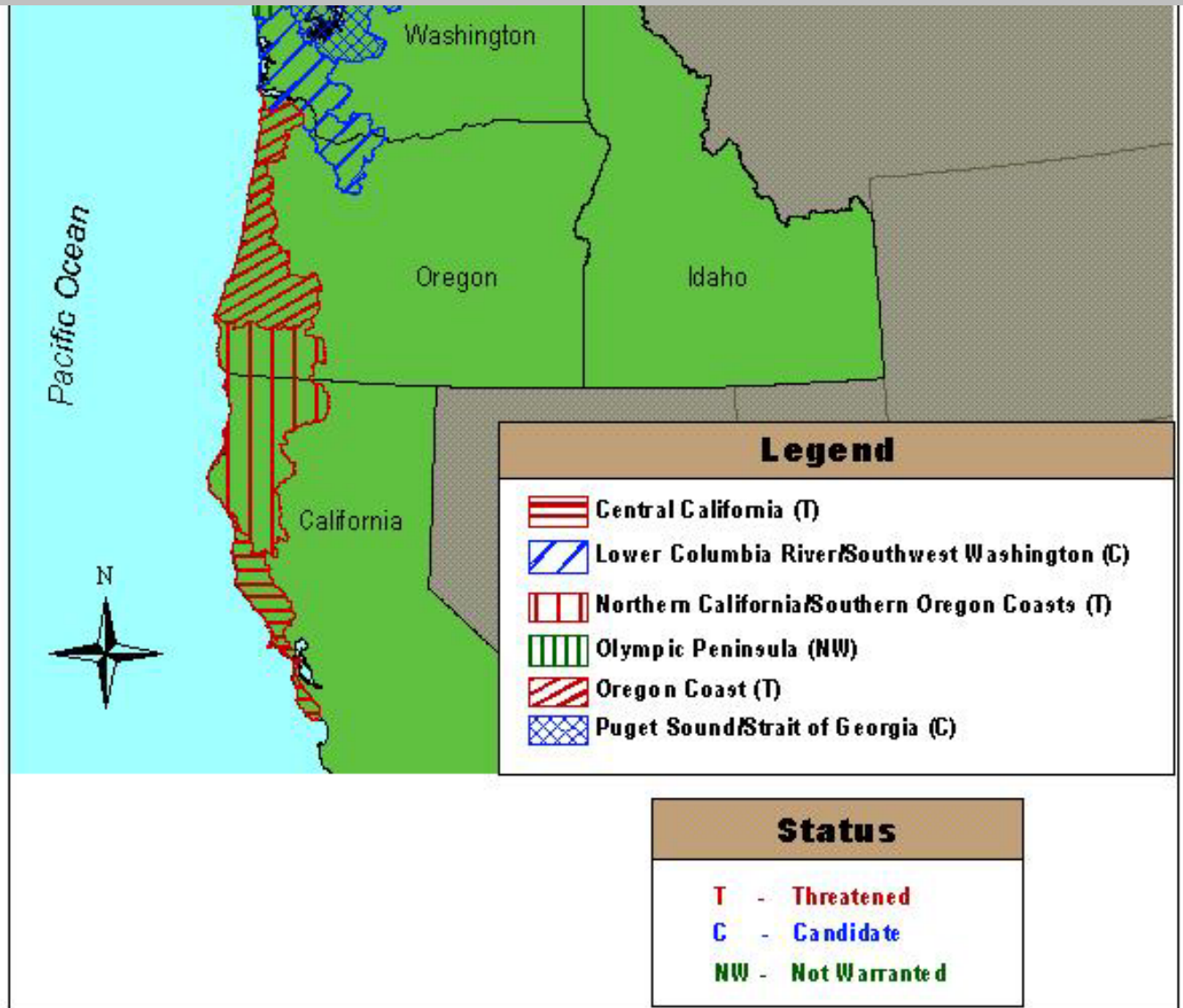
Ecologically Significant Unit (ESU)

“a population of fish that (1) is substantially reproductively isolated from other populations and (2) represents an important component in the evolutionary legacy of the species.”

Coho Salmon ESUs

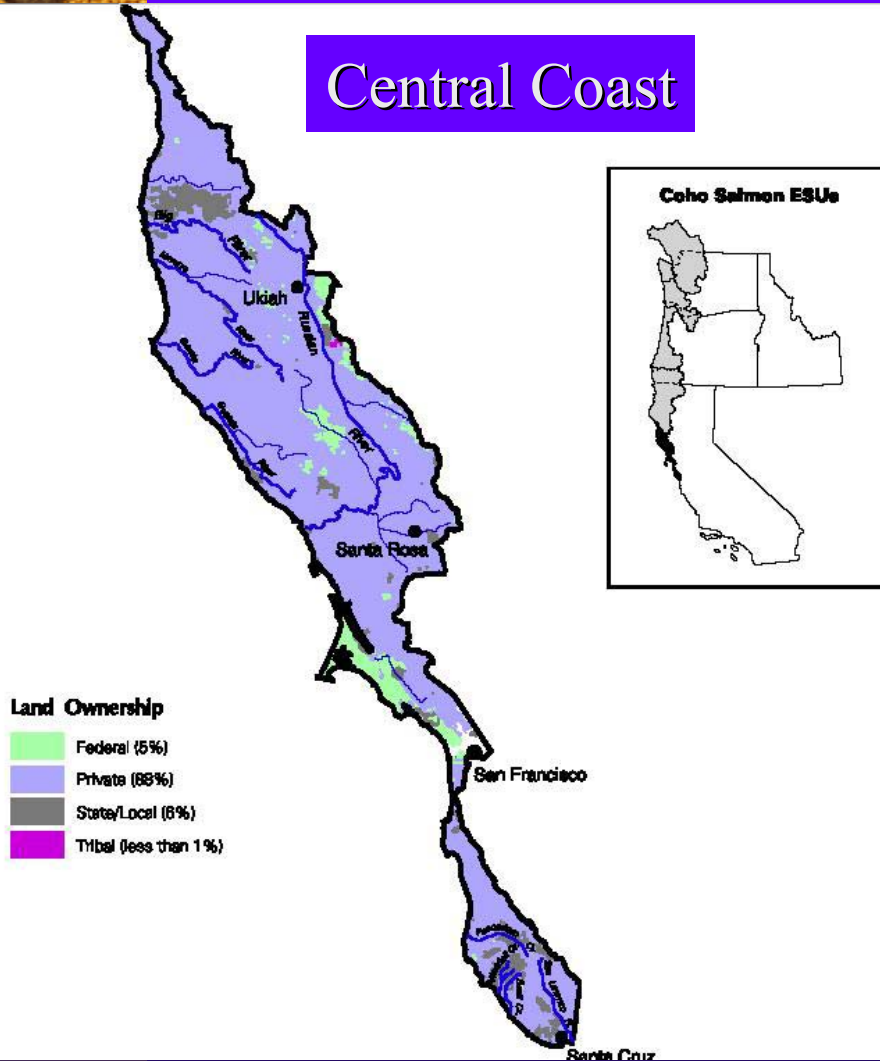
Overview Map from NMFS Website

<http://www.nwr.noaa.gov/1salmon/salmesa/mapswitc.htm>

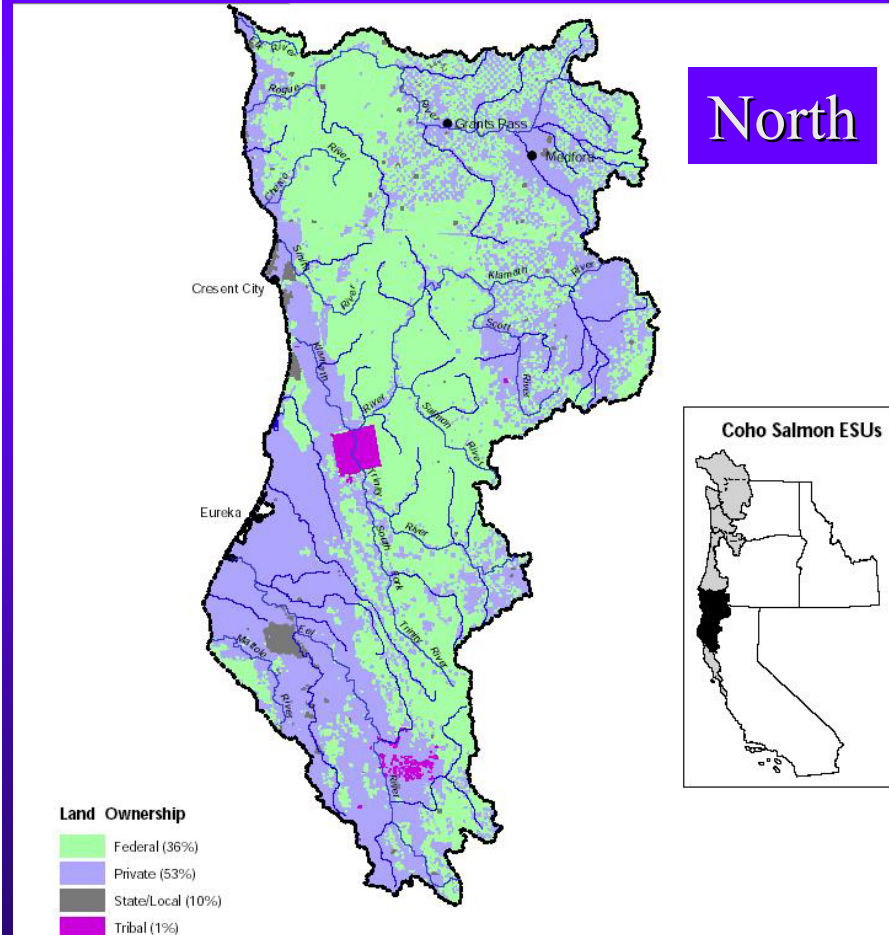


Coho Salmon ESUs Detail Maps from NMFS website

Central Coast



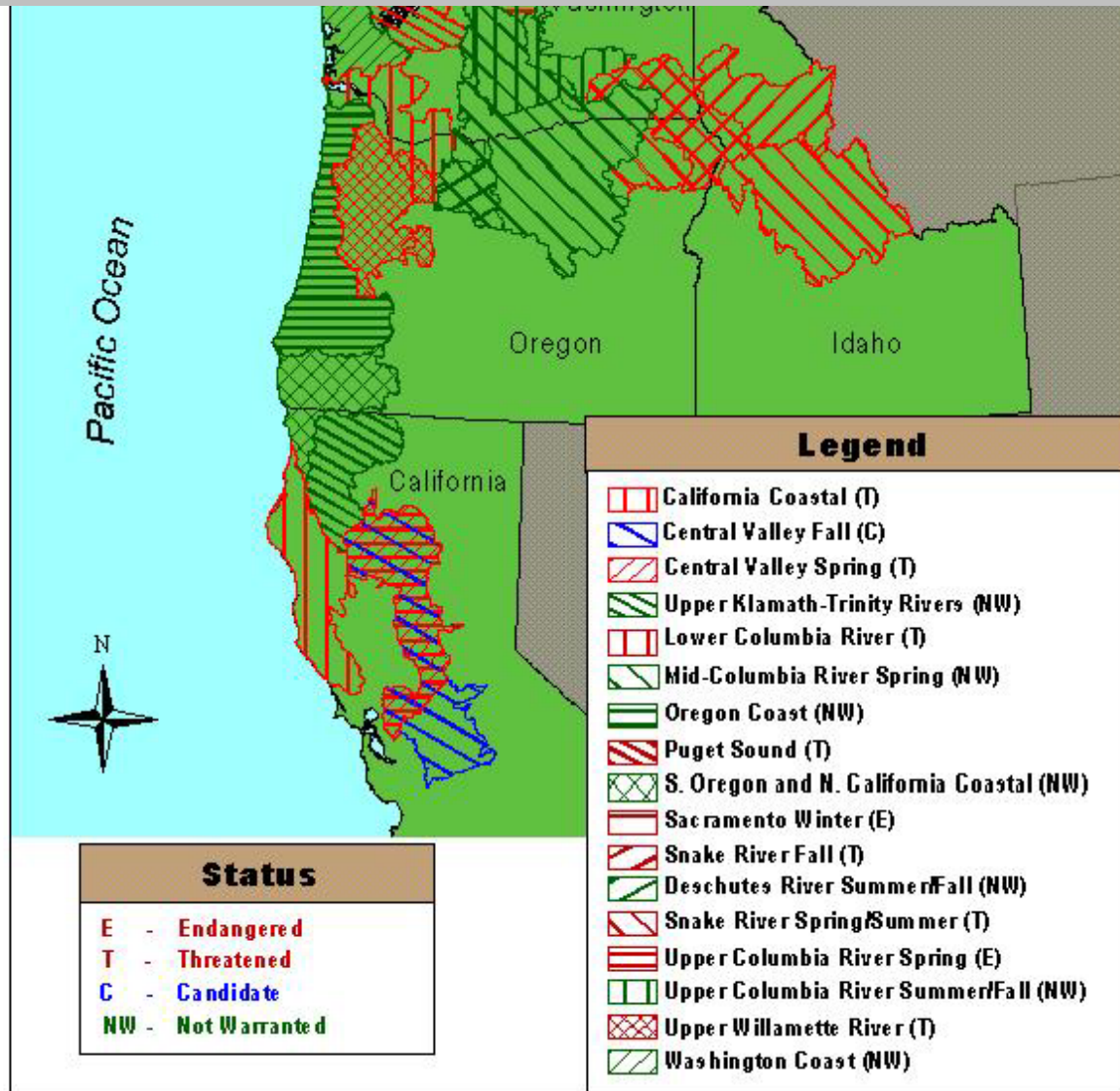
North



Chinook Salmon ESUs

Overview Map from NMFS Website

<http://www.nwr.noaa.gov/1salmon/salmesa/mapswitc.htm>



Steelhead ESUs

Overview Map from NMFS Website


<http://www.nwr.noaa.gov/1salmon/salmesa/mapswitc.htm>



Active Ingredients Affected

- 
- ◆ 1,3-dichloropropene
 - ◆ 2,4-D
 - ◆ Acephate
 - ◆ Azinphos-methyl
 - ◆ Bensulide
 - ◆ Bromoxynil
 - ◆ Captan
 - ◆ Carbaryl
 - ◆ Carbofuran
 - ◆ Chlorothalonil
 - ◆ Chlorpyrifos
 - ◆ Coumaphos
 - ◆ Diazinon
 - ◆ Diflubenzuron
 - ◆ Dimethoate
 - ◆ Disulfoton
 - ◆ Diuron
 - ◆ Ethoprop
 - ◆ Fenamiphos
 - ◆ Fenbutatin-oxide

Active Ingredients Affected (cont.)

- 
- ◆ Lindane
 - ◆ Linuron
 - ◆ Malathion
 - ◆ Methamidophos
 - ◆ Methidathion
 - ◆ Methomyl
 - ◆ Methyl parathion
 - ◆ Metolachlor
 - ◆ Metribuzin
 - ◆ Naled
 - ◆ Oxyfluorfen
 - ◆ Pendimethalin
 - ◆ Phorate
 - ◆ Prometryn
 - ◆ Propargite
 - ◆ Tebuthiuron
 - ◆ Triclopyr (BEE + TEA)
 - ◆ Trifluralin

The rest of the active ingredients originally included in the lawsuit have been removed from this list. They were found by EPA to have no effect on salmonids.

Urban Use

Active Ingredients Affected

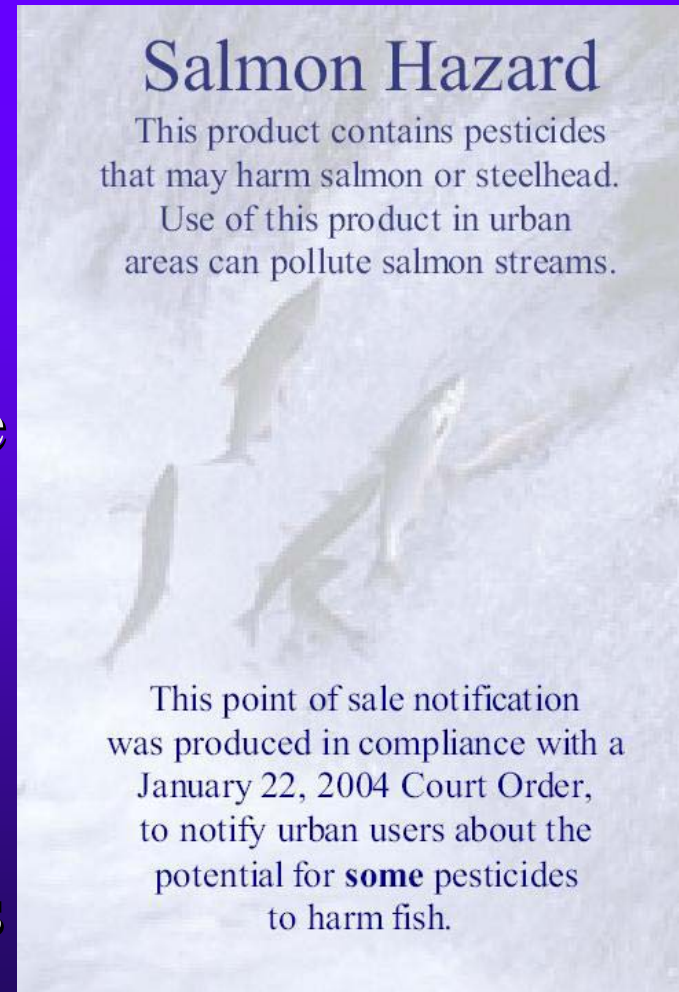


- 2,4-D
- Carbaryl
- Diazinon
- Diuron
- Malathion
- Triclopyr BEE
- Trifluralin

Urban Pesticides

Point of Sale Requirements

- ◆ Heading “Salmon Hazard” in large font.
- ◆ Statement: “This product contains pesticides that may harm salmon or steelhead. Use of this product in urban areas can pollute salmon streams”.
- ◆ Both heading and statement shall be visible to purchasers.
- ◆ EPA notified pesticide retailers on April 5, 2004.





Pesticide Programs Excluded

- ◆ Public Health Vector Control Programs.
- ◆ Noxious Weed Programs **
- ◆ NMFS-Authorized Programs.

** (Some safeguards required, see next slides)

Safeguards Required for Noxious Weed Programs



- Aerial application cannot occur within 100 yards of salmon supporting waters (SSW);
- Broadcast spraying cannot occur within 20 yards of SSW or when wind speed > 5 mph;
- Chemical spraying cannot occur within 15 feet of SSW or when wind speed > 5 mph;
- Only those pesticides registered for aquatic application can be used within 15 feet of SSW;

More...

Safeguards Required for Noxious Weed Programs (cont.)



- Pesticides cannot be used when precipitation is occurring or is forecast to occur within 24 hours;
- All spraying operations must be overseen by a certified applicator;
- For 2,4-D and triclopyr, only the amine formulations can be used.



Court Order Terminating Events

- ◆ As EPA goes through formal consultation with NMFS on each of the 38 active ingredients, and NMFS issues a Biological Opinion; they in turn will be removed from the list; or
- ◆ A finding by EPA that an active ingredient is “not likely to adversely affect” (NLAA) salmonids; and provided that NMFS does not reject or fail to concur with EPA on its NLAA determination.

Court Order Enforcement



- This order is specific to Washington Toxics Coalition and USEPA.
- FIFRA is not a mechanism to enforce the order, nor is it enforced by California state and local government through pesticide regulations or permit conditions.
- It can only be enforced through citizen law suits.

DPR's Position

- ◆ DPR expects to work cooperatively with U.S. EPA and other state and local agencies on this issue.
- ◆ As U.S. EPA officials inform DPR of their actions, DPR will make that information available.





DPR's Ongoing Efforts

- ◆ Scheduling meetings with US Fish & Wildlife Service, USEPA, and National Marine Fisheries Service for informal consultation.
- ◆ Posting salmonid habitat information and Point of Sale Notification requirements for urban Use Pesticides on website.



Salmonid Habitat Information Available Through DPR's Website

Salmonid Habitat Locations for California

<http://www.cdpr.ca.gov/docs/es/salmonid.htm>

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Salmonid Habitat Locations for California

On January 22, 2004, the U.S. District Court for the Western District of Washington at Seattle imposed no-use buffer zones around salmon-supporting waters (as defined by the court) in Washington, Oregon, and California for certain pesticides. On April 28, U.S. EPA launched the [Enviromapper Site](#), an interactive mapping website to help pesticide users better understand the court-ordered buffers. Another source of information on salmon-supporting waters in California where these measures apply is in the section lists in the back of [DPR's endangered species county bulletins](#).


The section lists in the bulletins provide only an index to watersheds where listed salmon and steelhead trout are known to occur. Within listed sections protection measures apply to flowing waters that contain fish where fish passage to the ocean is not prevented by dams or other impassable barriers. **Note that the court order supersedes the protection measures in the bulletins.**

The court's order will remain in effect for each pesticide listed below until any of the following occur:

1. The U.S. Environmental Protection Agency (U.S. EPA) determines that these pesticides have no effect on listed

U.S. EPA EnviroMapper Site: Opening Screen

<http://www.epa.gov/oppfead1/endoranger/wtc/uselimitation.htm>

Address  <http://www.epa.gov/oppfead1/endoranger/wtc/uselimitation.htm>

DashBar Enter search words here Search



List of Species

Pesticide Use
Limitations (by
County)

Court Ordered
Limitations

ESPP Database

For Kids:
Coloring Book
Poster

U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

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[EPA Home](#) > [Pesticides](#) > [Environmental Effects](#) > [Endangered Species Protection Program](#) > [Court Ordered Limitations](#) > [Court Ordered Buffers Around Pacific Salmon-Supporting Waters](#) > [Pesticide Use Limitations - 9th District Court Order](#)

Pesticide Use Limitations - 9th District Court Order

The EnviroMapper Site is intended to assist pesticide users' understanding of certain pesticide use limitations put in place by the 9th District Court and which apply to specific waters and specific pesticides' uses in Washington, Oregon and California. There are some exceptions to the limitations which may be found on the <http://www.epa.gov/oppfead1/endoranger/wtc/maps.htm> page. If you have not already done so, you should review the [background](#) and the [exceptions](#) to determine whether the Court Order applies to your use of the pesticides.

Because limitations may be changed or deleted as EPA continues its review of 55 pesticide active ingredients, pesticide users should visit this site, before, but close to the time of pesticide use to determine whether the Court Ordered limitations apply to your use of a specific pesticide. EPA will update this site when Court Ordered limitations change.

To determine specific waters and pesticide use limitations that may apply to your use of a pesticide, from the list at the right: 1) select the state in which you intend to apply a pesticide; 2) select the specific pesticide active ingredient you intend to use; and 3) click the "Submit" button.

On-line Help

State:

Select a state
California
Oregon
Washington

Pesticide:
(optional)

chlorpyrifos
coumaphos
diazinon
diflubenzuron
dimethoate
disulfoton
diuron - crop
diuron - non-crop
ethoprop
fenamiphos
fenbutatin oxide
lindane
malathion
methidathion
methomyl
methyl parathion
metolachlor

Submit

Clear Form

EnviroMapper: Map of Counties where limitations apply

U.S. Environmental Protection Agency

Counties in California with Court-Ordered Limitations

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GO

[EPA Home](#) > [Pesticide Use Limitations - 9th District Court Order](#) > Counties in California Shaded by Pesticide

☐ Pesticide Use Limitation applies in these Counties for:

(click on the county in which you intend to apply this pesticide)



EnviroMapper: Detailed view of County.

Viewer can zoom in to 1:24,000 scale

U.S. Environmental Protection Agency

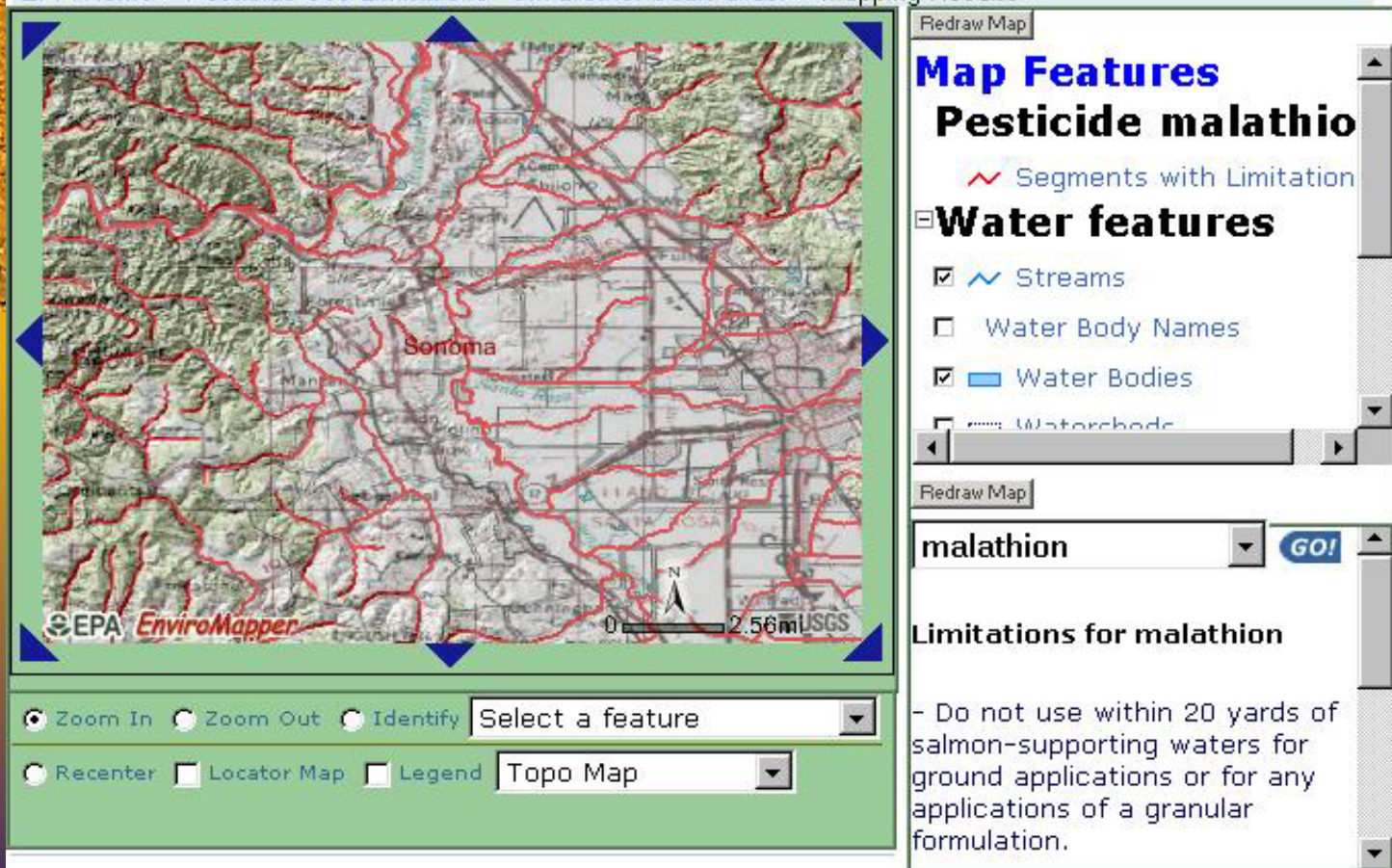
Court-Ordered Pesticide Limitations

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Search:

[GO](#)

[EPA Home](#) > [Pesticide Use Limitations - 9th District Court Order](#) > Mapping Results



Map Features

Pesticide malathio

~ Segments with Limitation

Water features

- ☒ ~ Streams
- ☐ Water Body Names
- ☒ Water Bodies
- ☐ Watersheds

malathion [GO!](#)

Limitations for malathion

- Do not use within 20 yards of salmon-supporting waters for ground applications or for any applications of a granular formulation.

Map Controls:

- ☒ Zoom In ☐ Zoom Out ☐ Identify
- ☐ Recenter ☐ Locator Map ☐ Legend
- Select a feature:
- Topo Map

Salmonid Habitat Locations for California. Link to DPR's Endangered Species County Bulletins

<http://www.cdpr.ca.gov/docs/es/colist.htm>

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County Bulletins List: Select county of interest.
This will open a .pdf file of that bulletin.

Select Bulletins by County

<u>Alameda</u>	<u>Alpine</u>	<u>Amador</u>	<u>Butte</u>	<u>Calaveras</u>	<u>Colusa</u>
<u>Contra Costa</u>	<u>Del Norte</u>	<u>El Dorado</u>	<u>Fresno</u>	<u>Glenn</u>	<u>Humboldt</u>
<u>Imperial</u>	<u>Inyo</u>	<u>Kern</u>	<u>Kings</u>	<u>Lake</u>	<u>Lassen</u>
<u>Los Angeles</u>	<u>Madera</u>	<u>Marin</u>	<u>Mariposa</u>	<u>Mendocino</u>	<u>Merced</u>
<u>Modoc</u>	<u>Mono</u>	<u>Monterey</u>	<u>Napa</u>	<u>Nevada</u>	<u>Orange</u>
<u>Placer</u>	<u>Plumas</u>	<u>Riverside</u>	<u>Sacramento</u>	<u>San Benito</u>	<u>San Bernardino</u>
<u>San Diego</u>	<u>San Francisco</u>	<u>San Joaquin</u>	<u>San Luis Obispo</u>	<u>San Mateo</u>	<u>Santa Barbara</u>
<u>Santa Clara</u>	<u>Santa Cruz</u>	<u>Shasta</u>	<u>Sierra</u>	<u>Siskiyou</u>	<u>Solano</u>
<u>Sonoma</u>	<u>Stanislaus</u>	<u>Sutter</u>	<u>Tehama</u>	<u>Trinity</u>	<u>Tulare</u>
<u>Tuolumne</u>	<u>Ventura</u>	<u>Yolo</u>	<u>Yuba</u>		

Section List

Section List - San Joaquin County

Sections	Species
03N09E: S34	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
03N09E: S35	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03N09E: S36	Steelhead Trout (CCV-ESU), Vernal Pool Fairy Shrimp
03S04E: S1-2	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S11-17,20-23	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S24-25	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S26-28	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S29	Steelhead Trout (CCV-ESU)
03S04E: S3	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S32-33	California Red-legged Frog, Steelhead Trout (CCV-ESU)
03S04E: S34-36	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S4-5,8	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S04E: S9-10	California Red-legged Frog, San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S05E: S1-2	Steelhead Trout (CCV-ESU)
03S05E: S12	Steelhead Trout (CCV-ESU)
03S05E: S13-36	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S05E: S3-11	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S1-4	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S10-15	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S16-18	Steelhead Trout (CCV-ESU)
03S06E: S19	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S20-23	Steelhead Trout (CCV-ESU)
03S06E: S24	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S25-29	Steelhead Trout (CCV-ESU)
03S06E: S30-32	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S33-35	Steelhead Trout (CCV-ESU)
03S06E: S5-9	Steelhead Trout (CCV-ESU)
03S07E: S1	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S17-20	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S2-4	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
03S07E: S5-8	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S07E: S9-10	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU), Valley Elderberry Longhorn Beetle
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04N05E: S1-15	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
04N05E: S16	Steelhead Trout (CCV-ESU)
04N05E: S17-19	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)

- ◆ Species locations are shown by Township/Range/Section coordinates.
- ◆ If the area where you intend to apply a pesticide (restricted by the court order) is located within a section included in this list, check for salmonid habitat in the vicinity of your application site.

(continued on next slide)

Section List - San Joaquin County

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03S06E: S1-4	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S10-15	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S16-18	Steelhead Trout (CCV-ESU)
03S06E: S19	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
03S06E: S20-23	Steelhead Trout (CCV-ESU)
03S06E: S24	Chinook Salmon (SRWR-ESU), Steelhead Trout (CCV-ESU)
03S06E: S25-29	Steelhead Trout (CCV-ESU)
03S06E: S30-32	San Joaquin Kit Fox, Steelhead Trout (CCV-ESU)
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Section List

- ◆ If you intend to make an aerial application, the product cannot be applied within 100 yards of salmonid habitat included in the section list.
- ◆ If you intend to make an application by ground, then you have to stay away 20 yards from salmonid habitat included in the section list.

What is Salmonid Habitat?



For purposes of this legal action, the court has determined that “salmon supporting waters” are the area below the ordinary high water mark of all streams, lakes, estuaries, and other water bodies where salmon are ordinarily found at some time of year.”

Point of Sale Requirements for Urban Pesticides

<http://www.cdpr.ca.gov/docs/es/pointsale.htm>



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Point-of-Sale Requirements for Urban-Use Pesticides for Protection of Salmonids

On March 24, 2004, the U.S. Environmental Protection Agency (U.S. EPA) published in the Federal Register a notice to to state pesticide agencies in California, Oregon, and Washington, and also to pesticide retailers who sell pesticides in urban areas in those states through which "salmon-supporting waters" pass. The notice informs these pesticide retailers and state agencies of notification requirements imposed by a January 22, 2004, ruling of the Court for the Western District of Washington in the case of Washington Toxics Coalition, et al. (WTC) v. U.S. EPA. Retailers are made aware that they are required to make available a point-of-sale notification developed by U.S. EPA pursuant to the Court Order whenever pesticide products containing any of the following seven active ingredients are sold:

- 2,4-D
- Carbaryl
- Diazinon
- Diuron
- Malathion
- Triclopyr BEE
- Trifluralin

According to U.S. EPA, the point-of-sale notification should incorporate the following written and graphic information:



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Species

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Court Issues Order in Endangered Species Case - Washington Toxics Coalition v. EPA

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Introduction

On February 17, EPA published in the [Federal Register](#) a notice announcing the availability of the January 22, 2004, ruling of the U.S. District Court for the Western District of Washington in the case of Washington Toxics Coalition (WTC) v. EPA. The Court is establishing buffer zones around certain water bodies in California, Oregon, and Washington where the court has ordered that specific pesticides cannot be used. Generally, for ground pesticide applications, the court order establishes a 20-yard buffer zone; for aerial pesticide applications, the court order establishes a 100-yard buffer zone adjacent to salmon-supporting waters. Chief Judge Coughenour issued this order in response to the WTC's July 16, 2003, motion for injunctive relief to establish buffer zones as an interim measure to reduce the likelihood of jeopardy to 26 species of salmon and steelhead. This order is in effect until the Environmental Protection Agency and, when appropriate, the National Marine Fisheries Service (NMFS) have completed an evaluation of whether endangered Pacific salmon and steelhead are sensitive to exposure from 55 pesticides. Under the Endangered Species Act, EPA must ensure that its registration of a pesticide is not likely to jeopardize the continued existence of species listed as endangered and threatened or adversely modify habitat critical to those species' survival. In addition to the obligation to ensure that its actions are not likely to jeopardize listed species, the Agency must consult, as appropriate, with the U.S. Fish and Wildlife Service (FWS) or NMFS if a pesticide's use may affect listed species or designated critical habitat species.

The Federal Government is currently reviewing the order issued by Chief Judge Coughenour and considering whether to appeal the decision. The government believes that decisions to protect endangered species from potential pesticide risks should be based on the best available scientific information and a thorough scientific evaluation. EPA's risk assessment process for pesticides provides a level of protection to all nontarget plants and animals, including endangered species. EPA has been working with the Department of the Interior, Department of



List of Species

Pesticide Use
Limitations (by
County)

ESPP Database

For Kids:
Coloring Book
Poster

U.S. Environmental Protection Agency

Pesticides: Endangered Species Protection Program

United States Environmental Protection Agency

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Questions and Answers on the Washington Washington Toxics Coalition Endangered Species Litigation

Order from the Court

In response to a citizen suit filed under the Endangered Species Act against EPA by a group of environmental organizations (Washington Toxics Coalition, et.al. v. EPA), the United States District Court for the Western District of Washington issued on January 22, 2004, an order enjoining, vacating and setting aside EPA's authorization of the use of certain pesticides generally, within 20 yards for ground applications and 100 yards for aerial applications, adjacent to salmon supporting waters in California, Oregon and Washington. Further, the Court ordered EPA to generate and facilitate the availability of a notification of potential hazards to salmonids in major urban areas in the affected states. The Court Order, which became effective February 5, 2004, and information to help pesticide users understand the Order, is available at www.epa.gov/espp. The United States is now reviewing the order in detail and considering legal options.

1. [What is EPA currently doing to protect endangered species?](#)
2. [What has EPA done about the 55 pesticides identified in the litigation?](#)
3. [What is EPA doing about those determinations where the pesticide "may affect" the species?](#)
4. [Why did the Judge issue this Order?](#)
5. [What does it mean that the Court "vacated" the registration of certain pesticides within buffer zones around Pacific Salmonid supporting waters?](#)
6. [Is it a violation of FIFRA to use a subject pesticide within the buffer zones?](#)
7. [Are these pesticide harmful to fish?](#)
8. [Why do the buffer zones apply to these particular pesticides?](#)
9. [Do the buffer zones in the Court's Order apply to FIFRA actions involving the subject pesticides that are approved after the effective date of Court's Order, including section 18 and section 24\(c\) actions?](#)
10. [What waters are considered "salmon supporting waters"?](#)
11. [Does the court order apply only to agricultural uses of these products?](#)
12. [When will EPA finish reviewing these pesticides?](#)
13. [When EPA finishes reviewing these pesticides, will the court ordered buffer zones be lifted?](#)
14. [How will I know if the court changes the buffer zones, areas and pesticide uses subject to the injunction?](#)
15. [What is EPA's process for protecting endangered and threatened species?](#)



Protected Resources

NOAA Fisheries

National Marine Fisheries Service



ESA LISTING MAPS

Select a species below to view range-wide and detailed ESU maps



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[Pink Salmon](#)



[Chum Salmon](#)



[Sockeye Salmon](#)



[Coho Salmon](#)



[Steelhead](#)



[Coastal Cutthroat Trout*](#)